In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 721

HARRY FRANCIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

The sole question presented by the petition for a writ of certiorari involves the sufficiency of the evidence to support petitioner's conviction of using the mails in the execution of a scheme to defraud. He was convicted on six counts, each charging a different use of the mails (R. 1–4, 46), and was sentenced generally to imprisonment for three and one-half years and to pay a fine of $500 (R. 48).

The prosecution resulted from petitioner's solicitation by mail of members of the non-medical healing profession to contribute to two funds

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which he represented had been established to secure the passage by the California legislature of a bill providing for the licensing of such practitioners. Petitioner urged the persons so solicited to contribute $100 each, by check, to a so-called "Naturopathic Trust Fund," and he represented that such contributions would "not be used unless the Bill is passed and licenses are issued. When you send in your check, it is put in a safety deposit box, to be used to defray expenses, only if the Bill passes. This check is not cashed before the Bill is passed and in the event that the Bill does not pass, your original check will be returned to you." (R. 74–75.) Fifty-dollar contributions were solicited for a fund for so-called operating costs (*ibid.*). The bill did not pass. The fraudulent nature of the scheme was amply established at the trial by the testimony of three of the victims and other evidence showing that their $100 contributions were not held in trust as promised but were immediately deposited in petitioner's bank accounts and were not returned. The evidence is summarized in the opinion of the Court of Appeals (R. 74–79; 172 F. 2d 619), and we deem it unnecessary to repeat it here.

Both courts below having upheld the sufficiency of the evidence to warrant submission of the case to the jury, we submit that there is no occasion for further review by this Court. See *Kann* v.

United States, 323 U. S. 88, 93; *United States* v. *Johnson*, 319 U. S. 503, 518; *Delaney* v. *United States*, 263 U. S. 586, 589–590.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

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